IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

***

Criminal Revision No. 340 of 1996

Date of Decision: December 11, 2007

Satnam Singh ... Petitioner

Versus

State of Punjab ... Respondent

...

CORAM: HON'BLE MR. JUSTICE HARBANS LAL

...

Present: Mr. J.B.S Gill, Advocate
for the petitioner.

Mr. A.S. Brar, DAG Punjab
for the State.

...

HARBANS LAL, J

This revision has been directed against the judgment/order of sentence dated 28.1.1995 rendered by the Court of learned Sub Divisional Judicial Magistrate, Balachaur whereby he convicted and sentenced the accused Satnam Singh to undergo rigorous imprisonment for six months under Section 304-A of I.P.C. and rigorous imprisonment for six months under Section 279 of IPC with a direction that both the sentences shall run concurrently.

The facts in brief of the prosecution case are that Gurdeep Singh son of Darshan Singh, resident of Village Khemowal, Police Station Nawanshahr, made statement before ASI Jarnail Singh, stating therein that

on 1.8.1992 at about 2.30 P.M., he along with Kesar Singh son of Diwan Singh, was carrying a buffalo in his tractor trolly to Village Majra Jattan. When they covered a distance of about 1-1/4 km. from Mutton Bridge towards Kathgarh, they saw Bikkar Singh son of Mela Ram going ahead of them on his bicycle. In the meanwhile, a truck bearing registration no. DLIG-1073 being driven rashly, negligently and without blowing horn by accused Satnam Singh came from the opposite direction, i.e. from Ropar side and struck against the bicycle of Bikkar Singh, who was going on the left side of the road. As a result of the impact, Bikkar Singh fell down in the nearby ditches on the left side and he died at the spot. ASI Jarnail Singh having made his endorsement under the above mentioned statement, sent the same to the Police Station, where on its basis, formal FIR was recorded. The aforesaid ASI visited the spot and prepared the rough site-plan showing the place of accident.

After completion of investigation, the charge sheet was laid in the Court of Ilaqa Magistrate for trial of the accused.

The accused was charged under Section 279/304-A of IPC to which he did not plead guilty and claimed trial.

To bring home guilt against the accused, the prosecution examined PW-1 Dr. Ashok Kumar, PW-2 Gurdeep Singh, PW-3 Kesar Singh, PW-4 Parveen Singh, PW-5 Gurmail Singh, PW-6 Amrik Singh, PW-7-Sukhwinder Singh, Photographer and closed its evidence. ASI Jarnail Singh (Investigator) breathed his last pending disposal of the trial.

When examined under Section 313 of the Code of Criminal Procedure, the accused came up with the plea that he has been falsely implicated in this case and that he did not cause the alleged accident.

Without adducing any evidence, he closed his defence.

After hearing the learned APP for the State, learned defence counsel and examining the prosecution evidence, the learned trial Court convicted and sentenced the accused, as noticed at the outset. Feeling aggrieved with the conviction and sentence inflicted upon him, he preferred an appeal, which was dismissed by the Court of learned Sessions Judge, Hoshiarpur on 27.5.1996.

I have heard Mr. J.B.S Gill, learned counsel for the petitioner as well as Mr. A. S. Brar, learned Deputy Advocate General, Punjab.

Mr. J.B.S.Gill, Advocate, counsel for the petitioner stressing his every nerve, maintained with great eloquence that prosecution was to sink or swim with the evidence of Gurdeep Singh, complainant-PW-2 as well as Kesar Singh, PW-3, whose cross-examination nullifies their examination-in-chief and, thus, the learned trial Court was not justified in recording conviction or sentence. He further pointed out that the learned first Appellate Court also,without appreciating the cross-examination of the above mentioned witnesses, dismissed the appeal. He further puts that when the aforementioned witnesses started resiling from their examination-in-chief, they were not got declared hostile by the learned APP, with the result their cross-examination has to be accepted. To buttress this stance, he has adequately relied upon the observations made by the Apex Court in re: **Baldev Singh** v. **State of Punjab**, 1990 Criminal Law Journal 2604 (S.C).

Mr. A.S.Brar, learned Deputy Advocate General, Punjab, half-heartedly argued that although these witnesses were not got declared hostile by the learned APP, nevertheless, their consistent examination-in-chief establishes the guilt against the accused-petitioner.

This contention is untenable. It is in the cross-examination of Gurdeep Singh, PW-2 that he was neither acquainted nor related to the deceased Bikkar Singh, who was going behind them and that Kesar Singh and Bikkar Singh were chattering with each other. He has admitted in his further cross-examination that the deceased Bikkar Singh was holding the left side chain of the rear shutter of trolly and that the truck was moving at a moderate speed; that he had not read out number of the truck nor had seen its driver. He further demolishes the prosecution case by stating in categoric terms that he did not witness the accident taking place. He has further disowned the statement made by him before the Police. It is in his further cross-examination that the driver had run away from the spot and he does not remember his name or address. He further deposed that he is unable to tell as to whose negligence had resulted in this accident and that at the asking of Kesar Singh, his statement (Gurdeep Singh, PW) was recorded by the Police and that he cannot say that the deceased Bikkar Singh died because of having lost the grip of the chain of the trolly, which he was holding. He has negated whatever he stated in his examination-in-chief. The learned APP conducting the case in the trial Court did not take the pains to seek permission from the Court to cross-examine this witness. The learned trial Court did not exhibit its indulgence by putting Court question as to which part of his statement was true.

Kesar Singh, PW-3 regretted his inability to tell the day on which the accident took place. It is in his cross-examination that the deceased was holding Sangal (chain) of the rear shutter of the trolly; he came to know from the mouth of the tractor driver that one person has died. In his next breath, he has stated that I do not know as to how he died as I

was sitting on the back side of the tractor in my own thoughts. He further went on to say that I have asked the Police not to record my statement as I have to go to foreign country and that is why I did not record my statement to the Police and that I have never joined in the investigation of the case. This evidence palpably wipes off his examination-in-chief. As transpires from his cross-examination, the learned APP who was representing the State, did not make a request to the Court to cross-examine this witness. Thus, the same has to be taken into consideration as it stands. Obviously, the cross-examination of both these material witnesses deals a coup-de-grace to the prosecution edifice. In re: **Baldev Singh's case** (supra), sought to be relied upon sufficiently by Mr. Gill, it has been observed by the Hon'ble Supreme Court as under :-

> " It is seen from the judgment of the High Court that though PW-10 in his chief examination has supported the prosecution version in all its material particulars has given a complete go-by and struck a death knell to the prosecution in his cross-examination stating that due to darkness he could not identify the culprits. The High Court was inclined to place reliance on his evidence on the ground that this witness in his statement before the police evidently referring to the statement recorded under Section 161 of the Code of Criminal Procedure during the investigation as well in the first information report Exh.PO, has narrated all the relevant facts and had not whispered in those statements that he could not identify the appellant due to darkness. This reasoning of

> the High Court in our view is erroneous. Needless to stress that the statement recorded under Section 161 of the Code of Criminal Procedure shall not be used for any purpose except to contradict a witness in the manner prescribed in the proviso to Section 162(1) and that the first information report is not a substantial piece of evidence. The High Court has misled itself into relying upon these two statements and thereby has fallen into a serious error. ”

In view of the aforequoted observations, the conviction cannot be recorded on the basis of the evidence tendered by Gurdeep Singh as well as Kesar Singh, P.Ws for the obvious reason that they both have given a complete go-by and struck a death knell to the prosecution in their cross-examination. It was obligated upon the learned APP, who was conducting the case in the trial Court, to seek permission of the Court to cross-examine these witnesses when they started making a volte-face in their cross-examination. When their examination-in-chief stands obliterated by their cross-examination, the fortress of the prosecution crumbles down. Sequelly, the Courts below were in error to record conviction merely on the basis of examination-in-chief. This approach is unknown to the realm of justice as well as the criminal jurisprudence. It is an abstract rule of evidence that while appreciating the evidence, whole statement of the witness is to be taken into account.

As a sequel of the above discussion, this revision succeeds and is accepted, setting aside the judgment/order of sentence recorded by the

learned trial Court as well as the judgment rendered by the learned first Appellate Court. The petitioner is acquitted of the charged offences.

Accordingly, this revision is disposed of.

(HARBANS LAL)
JUDGE

December 11, 2007

RS